

9 FAM 40.24 PROSTITUTION AND COMMERCIALIZED VICE

(TL:VISA-159; 12-20-96)

(a) Activities Within 10 Years Preceding Visa Application

(TL:VISA-105; 2-3-95)

An alien shall be ineligible under INA 212(a)(2)(D) only if—

(1) The alien is coming to the United States solely, principally, or incidentally to engage in prostitution, or has engaged in prostitution, or the alien directly or indirectly procures or attempts to procure, or procured or attempted to procure or to import prostitutes or persons for the purposes of prostitution, or receives or received, in whole or in part, the proceeds of prostitution; and

(2) The alien has performed one of the activities listed in 40.24(a)(1) within the last ten years.

[56 FR 30425]

(b) Prostitution Defined

(TL:VISA-105; 2-3-95)

The term "prostitution" means engaging in sexual intercourse for hire. A finding that an alien has "engaged" in prostitution must be based on elements of continuity and regularity, indicating a pattern of behavior or deliberate course of conduct entered into primarily for financial gain or for other considerations of material value as distinguished from the commission of casual or isolated acts.

[56 FR 30425]

(c) Where Prostitution Not Illegal

(TL:VISA-105; 2-3-95)

An alien who is within one or more of the classes described in INA 212(a)(2)(D) is ineligible to receive a visa under that section even if the acts engaged in are not prohibited under the laws of the foreign country where the acts occurred.

[56 FR 30425]

(d) Waiver of Ineligibility-INA 212(h)

(TL:VISA-105; 2-3-95)

If an immigrant visa applicant is ineligible under INA 212(a)(2)(D) but is qualified to seek the benefits of INA 212(h), the consular officer shall inform the alien of the procedure for applying to INS for relief under that provision of law. A visa may not be issued to the alien until the consular officer has received notification from INS of the approval of the alien's application under INA 212(h).

[56 FR 30425]

9 FAM 40.24 Related Statutory Provisions

INA 212(a)(2)

(TL:VISA-159; 12-20-96)

(D) PROSTITUTION AND COMMERCIALIZED VICE.—Any alien who—

(i) is coming to the United States solely, principally, or incidentally to engage in prostitution, or has engaged in prostitution within 10 years of the date of application or a visa, *admission*, or adjustment of status,

(ii) directly or indirectly procures or attempts to procure, or (within 10 years of the date of application for a visa, *admission*, or adjustment of status) procured or attempted to procure or to import, prostitutes or persons for the purpose of prostitution, or receives or (within such 10-year period) received, in whole or in part, the proceeds of prostitution, or

(iii) is coming to the United States to engage in any other unlawful commercialized vice, whether or not related to prostitution, is *inadmissible*.

[Added by sec. 601 of Pub. L. 101-649, Nov. 29, 1990, 104 stat. 5067.]

[Amended by sec. 308(d) of Pub. L. 104-208, Sept. 30, 1996.]

(TL:VISA-159; 12-20-96)

For the provisions of INA 212 (h) see 9 FAM 40.21 (a) Related Statutory Provisions.